IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.124 OF 2007

Shri Sunil Dattatraya Kokane .. Appellant
(Orig.Defendant)

Versus

Shri Ankush Laxman Kokane .. Respondent
(Orig. Plaintiff)

Shri A.P.Kulkarni for the Appellant
Shri S.S.Kulkarni for the Respondent

CORAM : S.R. SATHE,J.
DATED : 03/09/2007

ORAL ORDER :-

1. By consent heard finally at admission stage.

2. The Appellant-original defendant in Special Civil Suit No.15 of 2006 has preferred this appeal against the order passed by the Court of CJSD, Baramati whereby Plaintiff's application for temporary injunction restraining defendant from obstructing Plaintiff's possession of the suit land described in detail in para-1 of the plaint was allowed. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiff' and 'defendant'.

3. The brief facts giving rise to this appeal are

as under :-

The suit land bearing block No.169 admeasuring 2.36R situated at village Zargadwadi, Taluka Baramati was owned by the defendant. According to Plaintiff, the defendant had obtained loan from several persons and had mortgaged his lands. As he wanted to clear the dues of the others, the defendant obtained amount of Rs.1,50,000/- from the Plaintiff on 06/02/2004 and executed conditional sale deed for the period of 2 years for the land admeasuring 20R. On the same day, defendant got the land redeemed from Rajaram Laxman Kokane and executed conditional sale deed of the said land in favour of Plaintiff. Again on 07/02/2004, defendant took additional amount of Rs.2,50,000/- and executed another conditional sale deed for the land admeasuring 48R. Inspite of the expiry of the period mentioned in the Sale Deed the defendant did not return the amount to Plaintiff. Hence, Plaintiff took the possession of the said land. However, as there was no adequate water for the said lands Plaintiff also obtained right to take water out of defendant's other land.

4. After obtaining the possession of the land, Plaintiff planted pomegranate (डाळींब) trees as well as sugarcane in the said land. However, thereafter, the defendant filed a false complaint against the Plaintiff that Plaintiff is doing money lending unauthorizedly and illegally. In that connection, Plaintiff was called to police station and it caused mental harassment to Plaintiff. After necessary inquiry, the Registrar, Co-operative Society dismissed the complaints filed by the defendant. On 01/11/2006, Plaintiff filed suit against defendant for recovery of the amount and alternatively prayed that if the amount is not paid defendant be directed to execute re-conveyance deed in favour of Plaintiff. He also prayed for the permanent injunction restraining the defendant from obstructing Plaintiff's possession of the suit land.

5. The Plaintiff also filed an application Exh-16 and prayed for temporary injunction against the defendant.

6. The defendant filed his Written Statement and

opposed the suit and the application. Firstly, he contended that the defendant is carrying on money lending business illegally and it is his practice to get false document executed. Though, it is mentioned in the document that possession is given, it is mentioned only with a view to keep borrower under pressure. He also contended that he received only amount of Rs.25,000/- from the Plaintiff and the subsequent transactions are the outcome of the amount of interest due from defendant to Plaintiff. According to defendant, Plaintiff had advanced the amount at the rate of 15%. The defendant also contended that since the year 2001, he has paid huge amount towards repayment of loan and the interest. He also contended that the suit land is not in possession of the Plaintiff but it is actually being cultivated by the defendant. Hence, on all these grounds, the defendant prayed for the dismissal of the suit and the application.

7. In support of the application, Plaintiff filed his affidavit and the affidavits of 3 other witnesses and produced certain documents. As against this, the

defendant also filed his affidavit and produced certain documents. After hearing arguments of both the learned Advocates and considering the material on record, the learned Trial Judge came to the conclusion that Plaintiff has made out prima facie case for granting temporary injunction and the balance of convenience is also in favour of Plaintiff. Naturally, he granted temporary injunction as prayed against the defendant.

8. Being aggrieved by the above mentioned order the defendant has filed the present appeal. In this appeal before me, Shri A.P. Kulkarni, learned Advocate for the defendant has urged only 2 points. Firstly, he submitted that the learned Trial Judge has not at all considered the documents produced by the defendants. Secondly, he canvassed before me that the learned Trial Judge has wrongly held that the Plaintiff has made out a prima facie case and the balance of convenience is in his favour. He, therefore, submitted that the appeal be allowed and the application for temporary injunction filed by the Plaintiff be rejected. In the alternative, he also submitted that the Plaintiff be asked to reduce his claim and the rate of interest. As against this,

Shri S.S.Kulkarni, learned Advocate for the Plaintiff supported the judgement and order passed by the learned Trial Judge.

9. From the perusal of the defendant's Written Statement, one thing is certain that defendant had obtained some loan from the Plaintiff and for that purpose, he has executed two conditional sale deeds in favour of Plaintiff. Both these deeds are registered deeds. No doubt the defendant has a grievance that he did not receive the amount mentioned in the conditional Sale Deeds and the actual transaction was only of advancing loan of Rs.25,000/-. It is also his contention that the actual possession of the suit land was never given to the Plaintiff. However, firstly, it must be noted that at this stage, we are not supposed to scan the entire evidence in detail but it is necessary to see whether Plaintiff has made out a prima facie case to show that he is in possession of the suit land.

10. Firstly, it must be noted that as stated by the learned Trial Judge in both the registered documents,

it is clearly mentioned that Plaintiff has received the possession of the suit land from the defendants. It is pertinent to note that the in Written Statement, Defendant has nowhere specifically stated that those deeds were got executed by playing fraud or under duress. The only contention of the defendant is that taking undue advantage of defendant's need, Plaintiff got the said documents executed. If really, that would have been the case, then certainly the defendant would have immediately filed complaint to that effect but that has not happened. On the contrary, he filed complaint after laps of considerable time. What is more to be noted is that the complaint filed by him has been rejected by the concerned officer. Merely because he has also filed a criminal case against the Plaintiff alleging that Plaintiff is carrying on business of money lending without valid license, we can not jump to the conclusion at this stage that Plaintiff is not in actual possession of the suit land. If we see the copy of the letter written by the defendant to Deputy Chief Minister and police, we find that therein Plaintiff has stated that he has paid amount of Rs.2,90,000/- to the Plaintiff in cash during the period 02/08/2004 to

24/10/2005. It is really very strange to find that the defendant has not produced even a single document in the form of receipt or acknowledgment to show that he has actually paid such amount to the defendant. We can not ignore the fact that the defendant is not an illiterate person. It seems that he has signed the letter in English. It is not even his case that though he paid cash, Plaintiff did not issue any receipt. So, under such circumstances, it is difficult to accept the version of the defendant. It must be noted that defendant is a person who was having a rickshaw, tempo with him. Besides this, it seems that he was having a shop. So, it is very difficult to believe that such person would pay such huge amount to Plaintiff without obtaining any receipt.

11. It is an admitted fact that since the year 2004, name of the present Plaintiff is appearing in the column of cultivation of the land in question. Though, it is argued that the defendant has preferred an appeal against the said entry, defendant has not actually produced any documentary evidence in that behalf. So, the very fact that the name of Plaintiff is appearing

even in the column of cultivation also shows that the Plaintiff is in possession of the suit land. So, the learned Trial Judge was justified in relying on the averments in the two registered sale deeds and the other record and to hold that Plaintiff has made out a prima facie case for granting temporary injunction.

12. Shri A.P. Kulkarni, learned Advocate for the defendant strenuously argued before me that in the instant case, the defendant has produced one letter issued by Chhatrapati Sahakari Sakhar Karkhana on 18/11/2005 to the defendant which shows that defendant has grown sugarcane in the land bearing block No.169. However, it must be noted that Plaintiff has not produced the entire block No.169. But, it seems that he had purchased some portion of it. If it is so then merely because in the above mentioned receipt issued by the factory there is mention of block No.169, we can not jump to the conclusion that the said receipt is prima facie sufficient to show that Plaintiff has not received the possession of the suit land. Other receipt produced by the defendant dated 23/11/2005 is absolutely of no use to the defendant because there is

no mention of any Survey number or Gat number of the land. Incidentally, it must be noted that Plaintiff has filed the the affidavit of 3 other witnesses who have supported the Plaintiff's case that Plaintiff is in possession of the suit land. As against this, the defendant has not filed affidavit of any witness to show his alleged possession. Thus, having regard to all these facts and circumstances and the material on record, the learned Trial Judge has rightly observed that the Plaintiff has made out a prima facie case and the balance of convenience is also in his favour. I do not find any reason to interfere with the discretionary order passed in favour of Plaintiff.

In this view of the matter, there is no substance in this appeal.

Hence, the appeal is dismissed.

(S.R.SATHE, J)